IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5531 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE A.R.DAVE
and
HON'BLE MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

AMEE CASTOR & DERIVATIVES LTD.

Versus

SALES TAX OFFICER (4)

Appearance:

1. Special Civil Application No. 5531 of 2004

MR TANVISH U BHATT for Petitioner.

MR HASIT DAVE, AGP for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE A.R.DAVE
and
HON'BLE MR.JUSTICE K.A.PUJ

Date of decision: 29/09/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE A.R.DAVE)

RULE. Service of rule is waived by Mr. Hasit Dave, learned A.G.P. for the respondents. At the request of the learned advocates, the petition is finally heard today.

2. The facts giving rise to the present petition in a nutshell are as under :-

3. The petitioner Company is in the business of manufacturing Hydrogenated Castor Oil, Hydrosecum Ceturic Acid (hereinafter referred to as H.C.O. and H.C.A. respectively). On 22.04.2004, the premises belonging to the petitioner Company as well as residential premises belonging to the Directors of the petitioner Company had been surveyed. The Books of accounts, cash balance, stock etc. at the factory premises of the petitioner had also been examined. It is the case of the petitioner that no discrepancy was found in stock register or other books of accounts. Inspite of the said fact, an attachment order under Section 48-A of the Gujarat Sales Tax Act, 1969 (hereinafter referred to as the Act) had been passed whereby immovable properties of the petitioner along with castor oil worth Rs. 29,28,312/-, H.C.O. worth Rs. 13,72,000/- and H.C.A. worth Rs. 13,93,000/- had been attached. In addition to the above attachment, cheques for Rs. 51,00,000/-, duly signed by the authorised signatory of the petitioner Company had been taken by the respondent authorities. On the same day, notice for assessment had been served upon the petitioner Company under the provisions of the Act.

4. The petitioner is challenging the said attachment order on the ground that no assessment has been made so far and no proceedings had been initiated under the provisions of the Act before the said attachment order had been passed. It has been, therefore, submitted by learned advocate Mr. Tanvish Bhatt appearing for the petitioner that the impugned order of attachment should be quashed and set aside. It has been further submitted by him that in the interest of justice, the respondent authorities be directed to frame the assessment at an early date.

5. During the pendency of this petition, by an order dated 03.05.2004, this Court has stayed the operation of the attachment order dated 22.04.2004 in respect of H.C.O. and H.C.A. on a condition that the petitioner would deposit in all a sum of Rs. 10 Lacs with the respondent authorities and the petitioner would maintain stock of caster oil to the extent of Rs. 29,28,312/-.

It has also been directed that the respondents shall not encash the cheques which had been handed over by the petitioner to the respondent authorities.

6. On the other hand, learned A.G.P. Mr. Hasit Dave appearing for the respondents has submitted that on 22.04.2004, notice for assessment had been served upon the petitioner and, therefore, it cannot be said that the attachment order is bad in law for the reason that no proceedings were pending. It has also been submitted by him that so as to safeguard the interest of the revenue, it was necessary to attach the properties belonging to the petitioner Company because prima facie it had been found by the respondent authorities that the petitioner might become liable to pay tax to the tune of Rs. 50 Lacs as the petitioner had violated conditions of Entry No. 69 on which certain exemptions had been granted under the provisions of Section 49 (2) of the Act. It has been submitted by him that, if penalty is imposed and interest is calculated, the total amount payable by the petitioner might exceed even Rs.1 Crore. In the circumstances, so as to protect the interest of the revenue, the impugned attachment order had to be passed by the respondent authorities.

7. We have heard the learned advocates and have considered the facts of the case. It is not in dispute that till today, the assessment has not been framed and as on today, the petitioner is not liable to pay any amount by way of tax, penalty or interest to the respondent authorities. It, however, appears that so as to protect the interest of the revenue, the petitioner should be put to terms. At the same time, the order of attachment requires to be modified for the reason that by virtue of the order of attachment, the petitioner would not be in a position to do its business effectively.

8. Without going into the merits of the facts or without deciding whether the petitioner has committed any breach as alleged by the respondent authorities, in the interest of justice, we modify the order of attachment so as to see that the interest of revenue is protected and the petitioner can continue to do its business without any hinderance.

9. So far as the immovable properties are concerned, the attachment shall remain in force and the petitioner shall maintain stock of goods worth Rs. 40 Lacs. The stock may be in any form, whether in the form of Castor seeds, Castor Oil, H.C.O. or H.C.A. The Managing Director and one Director of the petitioner Company shall

file an undertaking before respondent No.2 to the effect that the petitioner Company shall maintain stock worth Rs. 40 Lacs as directed hereinabove.

10. The respondents shall not encash the cheques which have already been given by the petitioner Company to the respondent authorities.

11. The respondents are directed to frame the assessment before 31.12.2004. It is hoped that the petitioner shall render necessary assistance to the respondent authorities so that the assessment can be framed within the time prescribed.

12. If upon assessment, any amount of tax, penalty or interest becomes payable by the petitioner, the said amount shall be paid within the period prescribed under the law. If the petitioner is aggrieved by the order of assessment and files an appeal within the statutory period prescribed for filing an appeal and if an application for stay has also been filed before the Appellate Authority, till the Appellate Authority takes final decision on the stay application, the cheques given by the petitioner shall not be encashed by the respondents.

13. If, as observed in this order, any amount becomes payable by the petitioner and if the said amount is not paid, the petitioner shall revalidate the cheques deposited with the respondent authorities so as to enable the respondent authorities to get the amount of tax, penalty or interest.

14. The amount of Rs. 10 Lacs which the petitioner has deposited with the respondent authorities shall also be adjusted against the demand which might be raised upon the assessment.

15. In view of the above order, the attachment order dated 22.04.2004 stands modified accordingly.

16. The petition stands disposed as allowed. Rule is made absolute to the above extent with no order as to costs.

[A.R. DAVE, J.]

[K.A. PUJ, J.]

#Savariya#

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